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FAX COVER SHEET

Date: February 18, 2002
To: TC 3700
USPTO
Fax: 703 872 9303

FAX RECEIVED

FEB 19 2002

GROUP 3700

Re: Patent Application No. 09/396,530;

Examiner: W. Pierce

Filed 09/15/1999;

Art Unit: 3711

Inventor: Randall A. Addington, et al.

Attorney docket: 99-1002

Included with this Fax are the a) Transmittal From; b) Fee Transmittal Form; c) Credit Card Payment Form; d) Petition (5 pages)

Total number of pages, including cover page is 9 pages. If you don't receive all pages, please call (407) 727-7626, Fax No. (407) 727- 8209 or contact jrosenblatt@cfl.rr.com, as soon as possible.

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Joel I. Rosenblatt
02/18/02

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LICENSING & TECHNOLOGY LAW

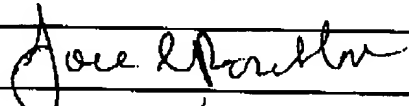
email: jrosenblatt@cfl.rr.com

PTO/SB/21 (08-00)
Approved for use through 10/31/2002. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/396,530	
	Filing Date	09/15/1999	
	First Named Inventor	Randall A. Addington	
	Group Art Unit	3711	
	Examiner Name	W. Pierce	
Total Number of Pages in This Submission	8	Attorney Docket Number	99-1002

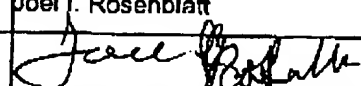
ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Joel I. Rosenblatt
Signature	
Date	02/18/2002 02/18/1999

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: _____

Typed or printed name	Joel I. Rosenblatt		
Signature		Date	

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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Approved for use through 10/31/2002. OMB 0651-0032
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE**FEE TRANSMITTAL
for FY 2002**

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$) 130.00**Complete if Known**

Application Number	09/396,530
Filing Date	09/15/1999
First Named Inventor	Randall A. Addington
Examiner Name	W. Pierce
Group Art Unit	3711
Attorney Docket No.	99-1002

METHOD OF PAYMENT

- 1.
- ☐
- The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number	
Deposit Account Name	

☐ Charge Any Additional Fee Required Under 37 CFR 1.18 and 1.17☐ Applicant claims small entity status. See 37 CFR 1.27

- 2.
- ☐
- Payment Enclosed:

☐ Check ☒ Credit card ☐ Money Order ☐ Other**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
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101	740	201	370	Utility filing fee	
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

SUBTOTAL (1) (\$) 0.00**2. EXTRA CLAIM FEES**

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20** =	X	
Multiple Dependent	-3** =	X	

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
----------------------------	----------------------------	-----------------

103	18	203	9	Claims in excess of 20
102	84	202	42	Independent claims in excess of 3
104	280	204	140	Multiple dependent claim, if not paid
109	84	209	42	** Reissue independent claims over original patent
110	18	210	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid		
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	480	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	130.00
123	50	123	50	Processing fee under 37 CFR 1.17(q)	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 130.00

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SUBMITTED BY

Name (Print/Type)	Joel I. Rosenblatt	Registration No. (Attorney/Agent)	26,025	Telephone	321 727-7626
Signature	<i>Joel I. Rosenblatt</i>	Date	02/18/2002		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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3-19-02
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1.181

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Examiner: W. Pierce

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Art Unit: 3711

Inventor: Randall A. Addington, et al.

Attorney docket: 99-1002

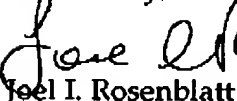
Request to Substitute a Corrected Petition

Included with this Fax is a copy of the 37 C. F. R. 1.181 Petition Under 37 C. F. R. 1.113(a) Petition (5 pages), which was earlier sent today by fax at 12:27pm on 02/18/2002. Applicants' attorney believes the Petition as earlier sent, inadvertently and by mistake was sent missing the last page 5, starting with "or that," or was sent with an incorrect last page, which is about the grant of a petition to make special, and is not related to this Petition.

If Applicants' attorney is correct in his belief that the Petition as earlier sent is missing the last page 5 or was sent with an incorrect signature page 5, Applicants' attorney requests this attached 37 C. F. R. 1.181 Petition Under 37 C. F. R. 1.113(a), (5 pages) with the correct signature page 5, replace the Petition copy sent by fax earlier today as set forth above, and that this Petition sent with this fax cover be made of record in this application.

Total number of pages, including cover page is 6 pages. If you don't receive all pages, please call (407) 727-7626, Fax No. (321) 727- 8209 or contact jrosenblatt@cfl.rr.com, as soon as possible.

Yours truly,


Joel I. Rosenblatt

02/18/2002
Reg. No. 26,025

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Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 9/15/99

Examiner Name: William Pierce

Inventors: Randall Addington et al.

Attorney Docket No.: 99-1002

Title: Method For Improving Bowler's Control

Assistant Commissioner of Patents

Washington, D.C. 20231

By Facsimile: 703-872-9303

37 C. F. R. 1.181 Petition Under 37 C. F. R. 1.113(a)

L

This Petition if Timely Filed

1. The Board of Patent Appeals and Interferences (hereafter, "Board"), has remanded this application to Examiner, with direction to "... take appropriate action, in accordance with the relevant statutes, regulations and Office practice, to resolve the foregoing problems." (see Remand, page 6). The "problems" to which the Board referred are the "... deficiencies of the final rejection ..." (See Remand, page 5), which were not cured by Examiner's improper entry of Examiner's "Substitute Answer" (see Remand, page 5).

2. In the Final Rejection, Paper No. 6, mailed 8/15/00, Paragraph 2, Examiner made an objection under 37 C. F. R. 1.83(a), stating, "The drawings must show every feature of the invention specified in the claims. Therefore the steps of claims 14-30 must be shown or the feature(s) canceled from the claim(s). . . While the addition of fig.9 is noted, it fails to illustrate all the steps recited in the claims."

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3. Examiner's Objection to the drawings (see Paragraph 2, above), first made in the First Office action, invited Applicant to submit a flow chart as an adequate way of showing the claimed method steps. See Paper No. 2, Paragraph 1. However, the Objection, as made in the First Office action in Paper No. 2 and in the Final Rejection in Paper No. 6, was stated as a conclusion, without record facts in support and failed to meet the substantial evidence standard for review of an examination is set forth in *In re. Zurko* 258 F.3d 1379 (Fed. Cir) 2001, at 1386. (hereafter "Standard of Review"). The Standard of Review for a Patent Office rejection requires a complete record of all of the facts and connecting logic or reasons, used in support of the arguments rejecting Appellants' claims and rebutting Appellants' arguments for patentability.

4. Examiner's Objection, without supporting record facts, showing why a drawing is required for Applicants' method claims or what steps of the claimed method were not shown in the drawings, failed to meet the Standard of Review, was so vague or ambiguous, that it precluded a thorough development of the issues to be considered and denied to Applicants a reasonable opportunity to cure the Objection or respond by rebuttal to what was in fact, or reasonably appeared to be, a rejection of the claims under 35 U.S.C. 112, First Paragraph, for lack of support in the specification..

5. On Remand, The Board stated,

On a more substantive level, the explanations of the 35 U.S.C. § 112, first paragraph, . . . [is] . . . So ambiguous that they have precluded a complete and thorough development of the issues to be considered on appeal.

See Remand, page 4.

6. The Objection made to the drawings, was argued by appellants to the Board, as appearing to be part of the same ambiguous rejection for failure of the specification to support the claims under 35 U.S.C. 112, First Paragraph.

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7. As Examiner has been directed by the Board to "take appropriate action, "... to resolve the foregoing problems," this time is an appropriate juncture to resolve Examiner's objection in view of the Board's Remand, page 4, stating, Examiner's, explanations of the 35 U.S.C. § 112, first paragraph, ... [rejection] ... in the final rejection ... [is] ... so ambiguous that . . . [it has] ... precluded a complete and thorough development of the issues to be considered on appeal.

8. The Board's Remand, identifying deficiencies in Examiner's final rejection requires that an examiner's action "... 'will be complete as to all matters', in compliance with 37 C. F. R. 1.104(b)," (see Remand, page 4), compels Examiner by considerations of "basic due process," (see Remand, page 5), to "identify each limitation in the claims which is believed to lack support in the specification."

9. A review of Examiner's Objection to the claims as lacking support in the specification's drawings, would resolve an issue which, when left to Examiner's conclusions without record supported facts, would deny to Applicants a complete examination and basic due process (see Paragraph 8, above referring to the Remand requiring Examiner's action be complete and compelling due process).

10. As the Remand now requires the Examiner to cure the deficiencies of his Final Action, this juncture for filing this Petition is appropriate as requesting consistent due process related correction of Examiner's Objection made to the drawings, under Rule 1.83(a).

II.

Examiner's Objection Is Contrary To Express Patent Examination Practice, Is Deficient Under The Standard of Review, And Should Be Vacated

1. While Examiner acknowledged the addition of Figure 9, showing the step by step

method of Applicants' claims, Examiner filed to identify which features specified in the claims and required to be shown in the drawings, in fact were not shown in the drawings.

2. In making the Objection, Examiner's grounds in support were stated only as 37 C.F.R. 1.83(a), and without any other record facts or any reference to patent examination practice as to the U.S. Patent and Trademark Office interpretation of this Rule.

3. The interpretation of Rule 1.83(a) is clearly stated in the *Manual of Patent Examining Procedure* (hereafter "MPEP"), §601.01(f), as,

35 U.S.C. 111(a)(2)(B) and 35 U.S.C. 111(b)(1)(B) each provide, in part, that an 'application shall include . . . a drawing as prescribed by section 113 of this title,"

and goes on to say,

It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

4. Examiner's omission of the pertinent part of the *MPEP* was a clear and conspicuous misreading and misapplication of the law set forth in 35 U.S.C. 111 and 35 U.S.C. 113 and the *MPEP* instructions given examiners.

5. Applicants replied to Examiner's objection in the Appeal Brief, stating,

Rule 1.83(a) is to be read under 35 U.S.C. 113, requiring a drawing be provided where necessary for an understanding of the subject matter sought to be patented.

6. Examiner has not shown by record facts as required by the Standard of Review, or contrary to the clear instruction by the *MPEP*, see Paragraph 4, above, why Applicant should be required to submit drawings to,

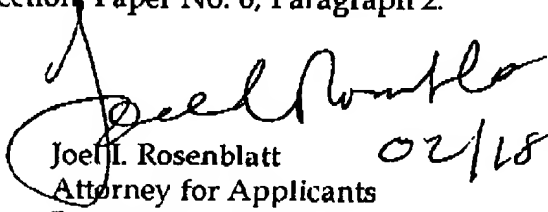
show every feature of the invention specified in the claims,

or that,

... the steps of claims 14-30 must be shown or the feature(s)
canceled from the claims(s),
as set forth by Examiner in Paper No. 6, Paragraph 2.

7. Examiner's Objection stated as his conclusion without record facts in support, fails the Standard of Review for patent examination, is contrary to the law under 35 U.S.C. 111, 113, as stated above and is contrary to the express patent examination practice set forth as instructions for examiners in the *MPEP*.

Wherefore, Applicants petition the Honorable Commissioner of Patents to vacate Examiner's Objection made in the Final Rejection, Paper No. 6, Paragraph 2.


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Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 9/15/99

Examiner Name: William Pierce

Inventors: Randall Addington et al.

Attorney Docket No.: 99-1002

Title: Method For Improving Bowler's Control

Assistant Commissioner of Patents

Washington, D.C. 20231

By Facsimile: 703-872-9303

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37 C. F. R. 1.181 Petition Under 37 C. F. R. 1.113(a)

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4. Examiner's Objection, without supporting record facts, showing why a drawing is required for Applicants' method claims or what steps of the claimed method were not shown in the drawings, failed to meet the Standard of Review, was so vague or ambiguous, that it precluded a thorough development of the issues to be considered and denied to Applicants a reasonable opportunity to cure the Objection or respond by rebuttal to what was in fact, or reasonably appeared to be, a rejection of the claims under 35 U.S.C. 112, First Paragraph, for lack of support in the specification..

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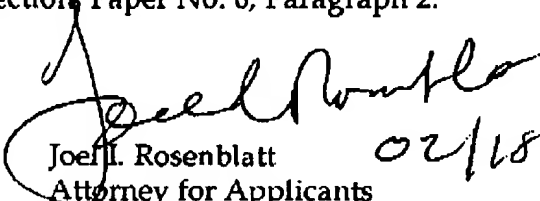
show every feature of the invention specified in the claims,

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Wherefore, Applicants petition the Honorable Commissioner of Patents to vacate Examiner's Objection made in the Final Rejection, Paper No. 6, Paragraph 2.


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